United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: March 17, 2004

TO : Celeste J. Mattina, Regional Director
Region 2

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Local 814, International Brotherhood of Teamsters
(Jamestown Commercial Management Co.)
Cases 2-CC-2615-1, 2-CD-1087-1

This matter was submitted for advice as to whether the Union's statement to a building management company that the Union would contact police "for the barricades and the setting up of the rat" violated Section 8(b)(4)(i)(ii)(B) and/or (D), where the Union wanted the work of moving one of the building's tenants. We agree with the Region that the Union did not threaten to engage in unlawful activity because a mere threat to "set up the rat," absent any evidence of the exact conduct which the Union contemplates, is not tantamount to either (1) a threat to engage in picketing or other confrontational conduct against customers or (2) a threat to "signal" to employees to withhold their services.

Briefly, the Union contacted the building management company in connection with the relocation of one of the building's tenants, which had retained a moving company that is signatory to a contract with another labor organization. The Union provided the management company with documents purporting to indicate that only the Union had jurisdiction over employees performing moving work. The Union left three telephone voice messages for the management company over several days, stating that the Union "would do what they had to do, " that there would be "ramifications" if the management company failed to resolve the moving issue, and that the Union would be contacting the police "for the barricades and the setting up of the rat," apparently referring to a balloon or some other caricature of a rat. The Union has not, at least yet, engaged in any actual conduct at the site, and there is no evidence, from past conduct or otherwise, to shed light on what exactly the Union meant when it indicated it would set up "the rat" with barricades.

Traditional picketing or confrontational conduct tantamount to picketing is coercive within the meaning of Section 8(b)(4). The Board will find an unqualified or ambiguous union threat to picket at a common situs to violate Section 8(b)(4)(B) absent assurances that the

picketing will be lawful.[1] Thus, the Union's statement to "set up the rat" would have violated Section 8(b)(4)(ii)(B) if it had constituted an unqualified threat to picket. We conclude, however, that the Union's statement did not constitute a threat to picket or engage in other unlawfully confrontational conduct. While we have taken the position that a large rat balloon can constitute coercive confrontational conduct in certain circumstances where, in the context of other activity and depending upon the placement and size of the rat, the effect on passersby is one of "running the gauntlet," in other circumstances we have concluded that the use of a rat balloon did not violate Section 8(b)(4)(ii)(B).[2] We have similarly concluded that the mere use of a rat balloon, even in the context of other activity, is not necessarily a (i) appeal to employees to cease work, if the conduct was aimed at the public and not at employees of a neutral employer.[3] The Board has found a union to have engaged in proscribed means to enforce a Section 8(b)(4)(D) jurisdictional claim to work when it engaged in conduct including the use of a rat balloon; however, the balloon was used in the context of such traditional "proscribed means" as blatant threats to picket and actual picketing, and the Board did not analyze separately the use of the balloon.[4]

Here, where there is no evidence of the context in which the Union was threatening merely to "set up the rat," we conclude that the Union did not unlawfully threaten to engage in picketing or other confrontational coercive conduct, conduct aimed at inducing employees to withhold

---

[1] Sheet Metal Workers Local 418 (Young Plumbing), 227 NLRB 300, 312 (1976)(generalized threat to picket common situs unlawful under 8(b)(4)(ii)(B) as not carrying "a presumption that the picketing would conform to established restrictions.") Compare Amalgamated Packinghouse Workers Packerland Packaging Co., Inc.), 218 NLRB 853 (1975) (union's threat to picket found lawful where it narrowly named only the primary, assured the union's intent to abide by the law, and disclaimed any intent to engage in secondary boycott).

[2] Bricklayers Local 1 (Yates Restoration Group), Case 2-CC-2594 et al., Advice Memorandum dated January 12, 2004 (no (ii) violation in handbilling and sporadic use of rat and "Uncle Sam" balloons, given all of the circumstances).

[3] Ibid.

[4] Laborers Local 79 (DNA Contracting), 338 NLRB No. 153 (2003).

their services, or proscribed means to enforce a jurisdictional work claim.[5] Thus, there is no evidence as to the size or placement of a rat, what other conduct, if any, was going to accompany the use of a rat, how many individuals were going to be involved, or any message to be conveyed via handbills, statements, inscriptions on the rat, banners, or otherwise. In all these circumstances, we cannot say that the Union made a threat unlawful under either Section 8(b)(4)(i)(ii)(B) or 8(b)(4)(D). Accordingly, the charges should be dismissed, absent withdrawal.

B.J.K.

[5] See generally Southwest Regional Conference of Carpenters (Bush Décor), Case 21-CC-3317, Advice Memorandum dated May 8, 2003 (union's threat to display banners and distribute leaflets not violative of Section 8(b)(4)(ii)(B), where handbilling not unlawful and use of banners not per se unlawful); Carpenters Local 1506 (Cutting Edge Drywall), Case 21-CC-3321, Advice Memorandum dated July 11, 2003 (same).